

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

CODY GOLDTOOTH,

Plaintiff,

vs.

THE WESTERN SUGAR COOPERATIVE,

**Defendant and Third-
Party Plaintiff,**

vs.

**DSI MECHANICAL, LLC and ZURICH
AMERICAN INSURANCE COMPANY,**

**Third-Party
Defendants.**

8:20CV113

ORDER

This matter is before the Court on the Motion to Dismiss, ECF No. 37, filed by Third-Party Defendant DSI Mechanical, LLC (DSI). On August 11, 2020, the Court ordered DSI to show cause as to why its motion should not be denied as moot. ECF No. 44. On August 20, 2020, DSI indicated that its motion may be denied as moot as to Western's contractual indemnity claim.¹ ECF No. 45. Therefore, DSI's motion will be denied as moot.

Accordingly,

IT IS ORDERED:

¹ Western brings three claims in its Second Amended Third-Party Complaint: 1) contractual indemnification, 2) contractual claim for attorneys' fees and costs, and 3) waiver of subrogation interest. ECF No. 32 at Page ID 161–63. In its briefing, DSI does not address Western's claim for attorneys' fees and addresses Western's claim regarding waiver of subrogation for the first time in its reply brief. The Court will not address these arguments as they have not been fully briefed. See *Cont'l Indem. Co v. IPFS of N.Y., LLC*, No. 8:19CV485, 2020 WL 1248577, at *3 (D. Neb. Mar. 16, 2020).

DSI's Motion to Dismiss, ECF No. 37, is denied as moot.

Dated this 31st day of August 2020.

BY THE COURT:

s/Laurie Smith Camp
Senior United States District Judge